

110TH CONGRESS  
2D SESSION

# S. 3389

To require, for the benefit of shareholders, the disclosure of payments to foreign governments for the extraction of natural resources, to allow such shareholders more appropriately to determine associated risks.

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## IN THE SENATE OF THE UNITED STATES

JULY 31, 2008

Mr. SCHUMER (for himself and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To require, for the benefit of shareholders, the disclosure of payments to foreign governments for the extraction of natural resources, to allow such shareholders more appropriately to determine associated risks.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

### 3   **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Extractive Industries  
5   Transparency Disclosure Act”.

### 6   **SEC. 2. FINDINGS.**

7       The Congress finds the following:

1           (1) Each year corporations pay billions of dol-  
2       lars to foreign governments and their affiliates for  
3       natural resources, such as oil, gas, coal, copper, dia-  
4       monds, and other extracted minerals.

5           (2) Developing countries that derive a signifi-  
6       cant portion of their revenues from natural resource  
7       extraction tend to have higher poverty rates, weaker  
8       governance, higher rates of conflict, and poorer de-  
9       velopment records than those countries that do not  
10      rely on resource revenues. Since revenues derived  
11      from natural resource extraction are often a singular  
12      opportunity for some developing countries to struc-  
13      ture programs and institutions to broaden the collec-  
14      tive and individual wealth of their citizens, it is im-  
15      perative that the uses of such funds are closely mon-  
16      itored.

17          (3) There is a growing consensus among oil,  
18      gas, and mining companies that transparency is  
19      good for business, since it improves the business cli-  
20      mate in which they work and fosters good govern-  
21      ance and accountability.

22          (4) Transparency benefits shareholders because  
23      of their desire to know the amount of such payments  
24      in order to assess financial risk, compare payments  
25      from country to country, and assess whether such

1        payments help to create a more stable investment  
 2        climate; moreover, undisclosed payments may be per-  
 3        ceived as corrupt and to the detriment of the image  
 4        of the corporation.

5            (5) It is in the United States best interest to  
 6        promote transparency, since transparency contrib-  
 7        utes to a better investment climate, a more stable  
 8        commodity supply, and greater energy security.

9        **SEC. 3. ADDITIONAL ANNUAL REPORT DISCLOSURES RE-**  
 10        **QUIRED.**

11        (a) AMENDMENT.—Section 13 of the Securities Ex-  
 12        change Act of 1934 (15 U.S.C. 78m) is amended by add-  
 13        ing at the end the following new subsection:

14        “(m) DISCLOSURE OF PAYMENT FOR RESOURCE EX-  
 15        TRACTION.—

16            “(1) DISCLOSURES REQUIRED.—The Commis-  
 17        sion shall modify the rules prescribed under sub-  
 18        section (b) to require that each issuer required to  
 19        file an annual report with the Commission shall dis-  
 20        close in such report the total amounts, for each for-  
 21        eign country and for each category of payment for  
 22        each foreign country, of any and all payments made,  
 23        directly or indirectly, by the issuer or any of its sub-  
 24        sidiaries, to an agency or instrumentality of a for-  
 25        eign government—

1           “(A) for natural resources in a foreign  
2 country; or

3           “(B) in any connection with the extraction  
4 of natural resources from a foreign country.

5           “(2) DEFINITIONS.—For purposes of this sub-  
6 section, the following definitions shall apply:

7           “(A) AGENCY OR INSTRUMENTALITY OF A  
8 FOREIGN GOVERNMENT.—The term ‘agency or  
9 instrumentality of a foreign government’  
10 means—

11           “(i) a foreign government;

12           “(ii) a department, ministry, agency,  
13 office, officer, employee, legislator, rep-  
14 resentative, subdivision, or agent of a for-  
15 eign government;

16           “(iii) a person that is directly or indi-  
17 rectly owned, controlled, or employed by  
18 one or more of the persons or entities de-  
19 scribed in clause (i) or (ii);

20           “(iv) an account, trust, or other de-  
21 vice held for the benefit of any of the per-  
22 sons or entities described in clause (i), (ii),  
23 or (iii); or

1 “(v) an entity controlled by the state,  
2 such as a state-owned oil company, and its  
3 agents.

4 “(B) CATEGORY OF PAYMENT.—The term  
5 ‘category of payment’, for any payment or  
6 transfer, means the category described in any of  
7 clauses (i) through (viii) of subparagraph (G)  
8 that most closely describes such payment or  
9 transfer.

10 “(C) EXTRACTION.—The term ‘extraction’  
11 means—

12 “(i) the search for any natural re-  
13 source, in its natural deposits and original  
14 locations;

15 “(ii) the acquisition of property  
16 rights, licenses, or properties for the pur-  
17 pose of further exploration or for the pur-  
18 pose of removing any natural resource  
19 from existing deposits on those properties,  
20 or both;

21 “(iii) the construction, drilling, and  
22 production activities necessary to retrieve  
23 any natural resource from its natural de-  
24 posit, and the acquisition, construction, in-  
25 stallation, and maintenance of field gath-

1           ering and storage systems, including lifting  
 2           any other natural resource to the surface  
 3           and gathering, treating, field processing,  
 4           and field storage;

5           “(iv) the transportation of any nat-  
 6           ural resource through the territory of any  
 7           foreign country by any means;

8           “(v) the export of any natural re-  
 9           source from an intermediary country;

10          “(vi) the acquisition of any conces-  
 11          sion, permission, permit, right, or other  
 12          authorization from a foreign government  
 13          necessary or desirable to conduct any of  
 14          the activities described in clauses (i)  
 15          through (v); or

16          “(vii) any combination of the activities  
 17          described in clauses (i) through (vi).

18          “(D) FOREIGN COUNTRY.—The term ‘for-  
 19          eign country’ means any country other than the  
 20          United States.

21          “(E) FOREIGN GOVERNMENT.—The term  
 22          ‘foreign government’ means the government of  
 23          any foreign country.

24          “(F) NATURAL RESOURCES.—The term  
 25          ‘natural resources’ means—

1 “(i) oil and gas reserves, metal ores,  
2 gemstones, industrial materials, and coal;  
3 and

4 “(ii) any other commodity of commer-  
5 cial value produced by the extraction of  
6 natural resources, in its natural or refined  
7 state, that the Commission shall, by regu-  
8 lation, determine should be subject to the  
9 reporting requirements of this subsection  
10 in order to carry out the purposes of this  
11 subsection due to the significance of the  
12 amounts being paid therefor by one or  
13 more issuers.

14 “(G) PAYMENTS.—The term ‘payments’  
15 means any transfer or payment of any kind, ei-  
16 ther direct or indirect, and irrespective of the  
17 amount, and in any form whatsoever, includ-  
18 ing—

19 “(i) host government’s production en-  
20 titlements;

21 “(ii) national state-owned company  
22 production entitlements;

23 “(iii) profits taxes;

24 “(iv) royalties;

25 “(v) dividends;

1 “(vi) bonuses (such as signature, dis-  
2 covery, or production bonuses);

3 “(vii) license fees, rental fees, entry  
4 fees, and other considerations for licenses  
5 or concessions; and

6 “(viii) other benefits to the foreign  
7 government or the agency or instrumen-  
8 tality of the foreign government that have  
9 a value of not less than \$100,000.”.

10 (b) DEADLINE.—The Securities and Exchange Com-  
11 mission shall prescribe the modifications to its rules re-  
12 quired by section 13(m) of the Securities Exchange Act  
13 of 1934 (as added by the amendment made by subsection  
14 (a) of this section) not later than 90 days after the date  
15 of enactment of this Act, and shall make such modifica-  
16 tions effective with respect to the annual reports of issuers  
17 with respect to the fiscal years of issuers ending on or  
18 after January 1, 2009.

19 (c) PUBLIC AVAILABILITY OF INFORMATION.—The  
20 Securities and Exchange Commission shall, by rule or reg-  
21 ulation, provide that the information filed by all issuers  
22 pursuant to such section 13(m) be compiled so that it is  
23 accessible by the public directly, and in a compiled format,  
24 from the website of the Commission without separately ac-



- 1 cessing on the EDGAR system the annual reports of each
- 2 issuer filing such information.

